

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

First-Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

PRESIDING OFFICER'S RULING DENYING MOTION TO STRIKE

(Issued June 2, 2021)

On May 27, 2021, Douglas Carlson filed a motion to strike certain portions of the testimony of Postal Service witness Steven W. Monteith.¹ Specifically, Mr. Carlson seeks to strike portions of the testimony that refer to an Office of the Inspector General (OIG) report that stated the result of a survey relating to customers' expectations for delivery times of First-Class Mail. Motion at 1. He asserts that the following two sentences should be struck from Monteith's testimony:

An OIG report noted that '[w]hile existing service standards for FCM is three to five days, we completed a nationally representative survey in 2019 that demonstrated 71 percent of respondents expected their sent to mail to arrive in seven days.' This suggests that some customers may not be impacted by the service standard changes as they have already expected longer delivery times than our current service standards.²

¹ Douglas F. Carlson Motion to Strike a Portion of the Direct Testimony of Postal Service Witness Steven W. Monteith (USPS-T-4), May 27, 2021 (Motion).

² Motion at 1; see *also* Direct Testimony of Steven W. Monteith on Behalf of the United States Postal Service (USPS-T-4), April 21, 2021, at 19-20.

Mr. Carlson states that the basis for the Motion is 39 C.F.R. § 3010.323, which prohibits the introduction of market research without accompanying detail about “questionnaires or data collection instruments, survey variables, and the possible values.” Motion at 1. He explains that the reference in the OIG report cites the market research, but the citation does not lead to any publicly available information about the missing information required by Rule 323.³ He states that the absence of the information in witness Monteith’s testimony prevents participants from evaluating the finding from the OIG report. *Id.* at 4. He also notes that witness Monteith’s interpretation of the finding is probably correct, but it does not reflect the statement in the OIG report. *Id.* at 5. Finally, Mr. Carlson argues that the prejudice to other participants is extraordinary because they do not have the time, expertise, or money to conduct their own market research to rebut the finding from the OIG study. *Id.* at 7.

The Postal Service responded to the Motion, on May 28, 2021, stating that Mr. Carlson’s challenge of reliability goes to the weight given the survey and not its admissibility.⁴ The Postal Service explains that the Commission can take official notice of such a finding and can assign the survey its proper weight. Response at 1. The Postal Service also states that the OIG’s survey findings should be presumed to be reliable. *Id.* at 3-4. The Postal Service asserts that the admission of the OIG’s survey finding would not prejudice participants because, as an expert in the postal industry, witness Monteith’s reliance on it is reasonable. *Id.* at 4. The Postal Service explains that witness Monteith offered the survey finding for illustrative purposes, and not to prove that consumers believe that the Postal Service’s current service standard for First-Class Mail is seven days. *Id.* In addition, the Postal Service states that

³ *Id.* at 2. The Presiding Officer granted a motion excusing the Postal Service from responding to an interrogatory seeking details about the survey because the Postal Service stated that it has no information within its custody or control that is responsive to the interrogatory. See Presiding Officer’s Ruling Excusing Postal Service from Answering Portions of DFC/USPS-T4-8, May 12, 2021.

⁴ United States Postal Service’s Response to Douglas F. Carlson Motion to Strike a Portion of the Direct Testimony of Postal Service Witness Steven W. Monteith (USPS-T-4), May 28, 2021, at 1 (Response).

participants have had sufficient opportunity to probe Witness Monteith's basis for relying upon the finding in discovery. *Id.* Thus, the Postal Service asserts the Motion should be denied. *Id.* at 5.

Rule 3001.164 provides that motions to strike are requests for extraordinary relief and shall not be used as a substitute for rebuttal testimony, briefs, comments, or any other form of pleading. 39 C.F.R. § 3010.164. Commission Rule 3010.323 requires that when proffered as evidence, market research should include information such as detailed description of the sample, observation, and data preparation designs. 39 C.F.R. § 3010.323. However, Rule 3010.322 provides that relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. 39 C.F.R. § 3010.322.

In Docket No. MC96-3, the Commission denied a motion to strike that sought to strike testimony which made reference to and rely upon library references not admitted into evidence.⁵ There, the Commission found that "th[e] contention is essentially a legal argument on the weight that should be given to certain testimony" and that "[s]triking testimony because of its questionable probity is unnecessary in administrative proceedings, where decision-makers are able to accord appropriate weight to evidence." Order No. 1143 at 4.

The Presiding Officer finds that extraordinary relief is not warranted here. Witness Monteith's testimony describes how customers are likely to respond to the proposed changes in service standards. USPS-T-4 at 2. The Presiding Officer finds that the testimony regarding the OIG survey report is relevant and therefore, admissible. The Presiding Officer also takes official notice of the report, as it is publically available on the OIG's website. Mr. Carlson's concerns regarding the lack of background on the statistical methods of the survey go to the weight given the report, and not its admissibility. Mr. Carlson or any other participant may challenge witness Monteith's

⁵ Docket No. MC96-3, Order Denying Postal Service Motion to Strike, December 12, 1996 (Order No. 1143).

statements or the conclusions which may flow from it with rebuttal testimony, or he may explain on brief why the Commission should not accord any weight to witness Monteith's views or the survey findings. Accordingly, the Motion is denied.

RULING

The Douglas F. Carlson Motion to Strike a Portion of the Direct Testimony of Postal Service Witness Steven W. Monteith (USPS-T-4), filed May 27, 2021, is denied.

Christopher Laver
Presiding Officer